

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts
Name Willie Green	Prisoner No. W66202	Case No. 04
Place of Confinement Massachusetts Correctional Institution at Shirley, Massachusetts		
Name of Petitioner (include name under which convicted) Willie Green		Name of Respondent (authorized person having custody of petitioner) V. Carol Meci, Acting Superintendent or Her Successor, Massachusetts Correctional Institution at Shirley, Massachusetts.
The Attorney General of the State of: Massachusetts		
<div style="font-size: 2em; font-weight: bold; transform: rotate(-5deg); position: absolute; left: 20%; top: 0;">04 CV 10360 JLT</div> <div style="display: inline-block;"> PETITION MAGISTRATE JUDGE <i>Alexander</i> </div>		
1. Name and location of court which entered the judgment of conviction under attack Superior Court, Boston, Massachusetts <u>Suffolk County</u>		
2. Date of judgment of conviction <u>February 23, 1999</u>		
3. Length of sentence <u>Seven to Ten Years for Manslaughter</u> Four to Five Years for Unlawful Possession of Firearm Conviction filed for Unlawful Possession of Ammunition		
4. Nature of offense involved (all counts) <u>Manslaughter, Unlawful Possession of Firearm, Unlawful Possession of Ammunition.</u>		
NOTE: Only the Manslaughter Conviction is being challenged in this Petition.		
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: 		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/> 		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court (Manslaughter Conviction)
- (b) Result Manslaughter Conviction Affirmed
- (c) Date of result and citation, if known July 5, 2002, modified April 10, 2003 reported at 55 Mass. Appeals Court Reporter at p. 376.
- (d) Grounds raised (1) Failure to instruct on defense of another violated petitioner's state and federal constitutional rights to due process and right to jury trial, in violation of 5th, 6th & 14th Amendments to U.S. Constitution, and (2) instructional error in supplemental jury instruction violated petitioner's rights to due process. See also Memo of Law filed herewith.
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Supreme Judicial Court of Massachusetts
- (2) Result Denied Further Appellate Review
- (3) Date of result and citation, if known June 26, 2003, 439 Mass. 1108 (2003)
- (4) Grounds raised Same Grounds Raised as described in 9(d) above. See also Memorandum of Law filed herewith in support of this Petition.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____

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- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

- A. Ground one: Conviction for manslaughter obtained in violation of
Petitioner's federal constitutional due process rights to present
a defense established by Massachusetts law, namely defense of another.
See Memorandum of Law filed herewith at pp. 19-20

Supporting FACTS (state briefly without citing cases or law) Petitioner and friend were
subjects of a gunfire attack by a third man. Petitioner defended
himself and friend by returning fire with his own gun and killed the
attacker. Trial court instructed the jury on self defense, but
refused over defense objection to instruct the jury on defense of
another. There was sufficient evidence which required the jury to be
instructed on defense of another, and the Massachusetts Appeals Court
agreed that such an instruction should have been given, but found
the error to be harmless. See further factual details in the
Memorandum of Law filed herewith, which is hereby incorporated by
reference in its entirety.

- B. Ground two: Conviction for manslaughter obtained in violation of
Petitioner's federal constitutional due process rights which required
the Commonwealth to prove his guilt beyond a reasonable doubt. The
erroneous refusal to instruct on defense of another relieved the
Supporting FACTS (state briefly without citing cases or law) prosecution of its burden of

having to prove his guilt
beyond a reasonable doubt.
See Memorandum of Law filed
herewith at pp. 20-22.

The same facts that support Ground 1 above support this ground.

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- C. Ground three: Conviction for manslaughter obtained in violation of
Petitioner's federal constitutional rights to due process and his
jury trial rights to have the jury determine his guilt.
 See Memorandum of Law filed herewith at pp. 22-23.
 Supporting FACTS (state *briefly* without citing cases or law) _____

Same facts that support Ground 1 above support this ground.

- D. Ground four: State appellate court's incorrect and unreasonable harmless
error analysis constituted a continuing violation of Petitioner's
federal constitutional rights to due process and his right to
have the jury and not the courts determine his guilt and Article VI
 Supporting FACTS (state *briefly* without citing cases or law) duties of state courts to uphold
the Federal Constitution.

Same facts that support Ground 1 above support this ground.
Even after finding error and recognizing it was of federal
constitutional dimension, the Massachusetts Appeals Court improperly
weighed the evidence when it determined that the error was harmless.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea Robert Jubinville, 487 Adams Street, Milton, MA 02186

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(c) At trial Robert Jubinville, 487 Adams Street, Milton, MA 02186(d) At sentencing Robert Jubinville, 487 Adams Street, Milton, MA 02186(e) On appeal Philip G. Cormier, Good & Cormier, 83 Atlantic Ave,
Boston, MA 02110(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

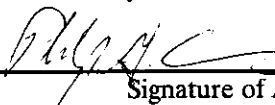
(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

2-22-04
(date)
Signature of Petitioner